

# EXHIBIT

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: : Docket #20cv8924  
IN RE NEW YORK CITY POLICING :  
DURING SUMMER 2020 DEMONSTRATIONS : New York, New York  
-----: May 23, 2023

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

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2 THE CLERK: This is in the matter of In Re New  
3 York City Policing During Summer 2020 Demonstrations,  
4 case number 20cv8924. Starting with plaintiffs'  
5 counsel, please state your appearance for the record.

6 MS. LILLIAN MARQUEZ: Good morning, Your Honor,  
7 this is Lillian Marquez, representing the People of the  
8 State of New York.

9 MR. WYLIE STECKLOW: Good morning, Your Honor,  
10 Wylie Stecklow for the Gray plaintiffs.

11 MS. TAHANIE ABOUSHI: Good morning, Tahanie  
12 Aboushi for the Roland plaintiffs.

13 MS. PAULA GARCIA SALAZAR: Good morning, Your  
14 Honor, this is Paula Garcia Salazar from the Legal Aid  
15 Society on behalf of the Payne plaintiffs.

16 MR. PETER SCUTERO: Good afternoon, Judge, this  
17 is Peter Scutero from the New York City Law Department  
18 on behalf of the defendants. I'm also accompanied here  
19 by Ms. Bridget Fitzpatrick from the Civil Litigation  
20 Unit of the New York Police Department.

21 MS. JENNY WENG: And good morning, Your Honor,  
22 this is Jenny Weng, also for the defendants.

23 THE COURT: Okay, first, this is being recorded  
24 for purposes of obtaining a transcription, but no other  
25 recording or dissemination is permitted.

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We're here based on two letters, dockets 1003  
3 and 1004. Ms. Fitzpatrick, I'm glad you're on the line.  
4 I have some questions for you. Are you there?

5

MS. BRIDGET FITZPATRICK: Yes, Your Honor, I'm  
6 here.

7

THE COURT: So if we want to get the current  
8 administrative guide, it sounds like you printed it out.  
9 Did I read your affidavit correctly?

10

MS. FITZPATRICK: Your Honor, what I meant to  
11 say is that we converted the documents as they live on  
12 the administrative guide to PDF form and then put those  
13 PDF documents on a disk and provided that to the Law  
14 Department for their review, the current administrative  
15 guide.

16

THE COURT: So that's the current complete  
17 administrative record.

18

MS. FITZPATRICK: Yes.

19

THE COURT: So I'm really mystified here. Why  
20 doesn't the Law Department give the current complete  
21 administrative record to plaintiffs. Plaintiffs can  
22 look at it. They can see if there's some revision that  
23 was made since 2020 that they want a prior copy of, and  
24 then they can ask for that as to those particular items.  
25 Any problem from the plaintiff's perspective with that?

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2 MS. MARQUEZ: The only thing is that we haven't  
3 really gotten a clear understanding. So the defendants  
4 have been saying that things have been shifted from one  
5 side to the other. I'm not completely clear on whether  
6 there's certain administrative guide provisions that  
7 were not just revised but completely removed. In which  
8 case it seems that wouldn't necessarily be reflected in,  
9 you know, a new current guide provision that just says  
10 this was revised this date. You know, I just want to  
11 make sure --

12 THE COURT: Hold on, hold on, hold on. Hold  
13 on. Removed and then put in the patrol guide or just  
14 removed entirely?

15 MS. MARQUEZ: Or just removed entirely, for  
16 instance.

17 THE COURT: Because if it's put in the patrol  
18 guide, presumably you have access to the patrol guide,  
19 right?

20 MS. MARQUEZ: Right, and so we would just want  
21 confirmation that, you know, if there are provisions  
22 that existed at the time of the protests, we are getting  
23 a copy of that if it's not, you know, if it's not as it  
24 was in the current administrative guide. If that makes  
25 sense. So we just want to make sure that we're not

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2 missing provisions altogether.

3 THE COURT: Right, okay. So I gather, Ms.  
4 Fitzpatrick, there's not a way to do what you did with  
5 respect to the guide as of, you know, May 1, 2020, or is  
6 there?

7 MS. FITZPATRICK: Hi, Your Honor, it would  
8 actually be done by the management orders and directives  
9 section. We would send a request to them. And the way  
10 their file system is set up, it would require a manual  
11 search through all of the subsections to determine how  
12 the guide existed in 2020. So it's possible to do --

13 (interposing)

14 THE COURT: -- as of that date.

15 MS. FITZPATRICK: No.

16 THE COURT: And, all right, so, well, I mean do  
17 you have any ideas, Ms. Marquez, because I don't think  
18 I'm going to make them do that. I mean my order was not  
19 specific enough to say that producing the whole thing  
20 right now showing the dates of the revision is somehow  
21 improper. I mean I'm not sure why (indiscernible)  
22 waited this long since the 19<sup>th</sup>, but, you know, do you  
23 have some reasonable thing we can ask them to do? If  
24 you can come up with it, I'm happy to try it.

25 MS. MARQUEZ: It's really hard, Your Honor,

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2 because we, you know, we've been, we brought this to  
3 their attention, I mean this should've been something  
4 that was an obvious part of their (indiscernible) years  
5 ago, but even as recently as February asked for the, you  
6 know, the guide as they existed at the time of the  
7 protests of course and now. I have a deposition  
8 tomorrow that is all about this process of drafting,  
9 developing, modifying, revising policies and procedures,  
10 this would fall squarely within that bucket. And I plan  
11 on holding open the deposition to the extent that, you  
12 know, to have to go back over whatever they give me.

13 You know, they should have, they should give me  
14 the current guide in total, but my concern is that there  
15 were quite a lot of revisions after the protests as I,  
16 as the timeline that I reference in the letter suggests.  
17 And so my concern is that I'm not going to be able to go  
18 over those, you know, those revisions. I don't really  
19 understand the suggestion that there needs to be some  
20 manual review when the department manual timeline says  
21 exactly which provisions were amended when --

22 THE COURT: No, no, no, but hold on, I mean  
23 that's the thing we're spinning in circles here. When  
24 you get the current guide, obviously you're not  
25 interested in, you know, how they cash paychecks or

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2 whatever else is in there, there's going to be probably  
3 90 percent of this stuff is irrelevant, maybe more,  
4 probably more than 90 percent. So you get the whole  
5 thing. You say you know what, these provisions I care  
6 about, and for those we'll figure out how they're going  
7 to go back and get the pre-2020 version of it. It'll  
8 say at the top whether there was a change.

9 Now, the one thing you've talked about, which I  
10 agree this will not solve, is if there was something in  
11 2019 that got removed since then. And I don't have a  
12 good way to solve it. I guess your idea is you look at  
13 each of the 5,000 different provisions and check if -  
14 you can't actually even look them up. I'm not even sure  
15 what you do. Maybe you see missing numbers. You know,  
16 it seems to me that if in the course of all this no one  
17 has mentioned that they were acting pursuant to an  
18 administrative guide provision or an administrative  
19 guide provision said something, and all you have is some  
20 sense that something was out there that got deleted, I  
21 just, I don't know that this is even worth doing.

22 So if you have an idea of what they could do  
23 that's reasonable, tell me. If not, I think you should  
24 just take the current guide, and then for any provisions  
25 that you're interested in and want to see the change, t

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2 that will be easy enough because you'll see there was a  
3 change since 2019 and you'll ask for that, and if it's  
4 relevant, you know, that makes sense, and they should  
5 get it for you as quickly as possible. But not for the  
6 entire thing.

7 MS. MARQUEZ: But, you know, part of the  
8 question, Your Honor, is we're doing these meet and  
9 confers, and part of the issue is that time was of the  
10 essence and that they should just produce everything  
11 without having to give more work to plaintiffs to  
12 determine, you know, like, okay, there was a revision to  
13 this policy. Can you please get this to me? And then  
14 we have to do meet and confers yet again about when that  
15 happened --

16 THE COURT: Wait, okay, hold on --

17 MS. MARQUEZ: But, you know, and they --

18 THE COURT: You're talking about - I'm trying  
19 to understand what you're saying. It doesn't seem like  
20 it's an inappropriate burden for you to look at the  
21 entire guide - I mean you don't care what revisions  
22 there are to the guide since 2019 per se. If they  
23 changed how they cash salary checks and the 10,000 other  
24 things in there that have nothing to do with this case,  
25 you don't care about that. You only care about the

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2 things that have to do with things that might relate to,  
3 you know, arrests, discipline, whatever else it might  
4 be. And that's, you know, whose specifically policies  
5 might have an impact here.

6 MS. FITZPATRICK: Your Honor, I'm sorry to  
7 interrupt, but I think I might have an easier way to do  
8 that even actually because there is a table of contents.  
9 The initial table of contents is just specific sections,  
10 but each one of those sections is broken down into  
11 subsections. So we could provide that to plaintiffs,  
12 and then they could look through the subsections and  
13 then they can let us know --

14 THE COURT: Hold on, hold on, hold on. Hold  
15 on, hold on. This is Ms. Fitzpatrick, right?

16 MS. FITZPATRICK: Yes, I'm sorry, Your Honor,  
17 it's Ms. Fitzpatrick.

18 THE COURT: You can provide a table of contents  
19 as of April 2020?

20 MS. FITZPATRICK: Yes.

21 MS. MARQUEZ: I believe, Your Honor --  
22 (interposing)

23 MS. MARQUEZ: We produced --

24 THE COURT: Hold on, hold on, hold on.

25 MS. MARQUEZ: -- those --

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2 THE COURT: Hold on, hold on. You're  
3 anticipating my next question to Ms. Fitzpatrick. Is  
4 the table of contents going to be sufficiently detailed  
5 that you could see every single procedure and then  
6 compare it to whatever you're producing on this disk  
7 today presumably and see what got removed and what got  
8 added?

9 MS. FITZPATRICK: No, it would just be able to  
10 provide information to the plaintiffs' counsel with more  
11 specificity with regards to what the subsections are so  
12 that they could say - because Your Honor is correct that  
13 there is quite a bit in the administrative guide that is  
14 not likely going to be relevant to the claims of this  
15 case. And then if the plaintiffs' counsel could just  
16 look at the table of contents, we can provide --

17 THE COURT: Stop, stop. I have no idea what  
18 you're talking about. What is this table of contents?  
19 Does it list every single, I'm using the word procedure.  
20 Maybe that's the wrong word. You used subsection,  
21 that's probably a better word. Does it provide a  
22 listing of every single procedure, subsection, whatever  
23 it's called?

24 MS. FITZPATRICK: Yes. There's - yes. It's  
25 broken down by section and then the sections are broken

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2 by subsections which have more specificity.

3 THE COURT: Okay. So, for example, I'm just  
4 picking out something that was attached to the  
5 plaintiffs' letter. They have procedure number 316-33,  
6 Unusual Disorder Plan Arrest Processing, which came from  
7 the administrative guide, issued in 2014. Apparently  
8 it's still in there I guess. Ms. Marquez, it's still in  
9 there as far as you know or you don't know?

10 MS. MARQUEZ: I do not know, and I did provide  
11 a table of contents that the defendants gave me, and it  
12 doesn't match the description that Ms. Fitzpatrick is --

13 THE COURT: Wait, wait --

14 (interposing)

15 MS. MARQUEZ: -- docket number 1004-3.

16 THE COURT: Yeah. No, I mean, Ms. Fitzpatrick,  
17 did you see the table of contents that was attached to  
18 the letter? It's got, you know, 20 topics in it and  
19 that's it.

20 MS. FITZPATRICK: Right, Your Honor, that's  
21 because in order to be able to - I apologize, Your  
22 Honor, I'm not particularly tech savvy, because it's a  
23 drop down. So you can click on the section, and then  
24 it'll show all of the subsections. And we could provide  
25 the subsections to the plaintiff, and then they could

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2 figure out what --

3 THE COURT: That should've happened weeks ago,

4 but that's not your fault, Ms. Fitzpatrick, I assume.

5 So let's just try this again. It's been unbelievable to

6 me that parties haven't had a conversation this depth.

7 I have my suspicions about who to blame, but I'm not

8 going to cast blame. I really want to solve this.

9 So your answer to the question, my question was  
10 you could provide a table of contents as of whatever  
11 date plaintiffs give you, presumably something like  
12 April 2020, that would have it broken down by every  
13 single subsection so that they could at least compare  
14 that to the thing you're about to give them, which is  
15 the full guide and plus you should give them the same  
16 table of contents in the exact same form so they could  
17 say, oh, you know, there used to be 316-32 and now that  
18 is missing. Would they be able to see that? Ms.  
19 Fitzpatrick.

20 MS. FITZPATRICK: I'm sorry, Your Honor, I'm  
21 not a hundred percent sure about how the management  
22 orders and directive sections maintains the table of  
23 contents for prior versions of the administrative guide,  
24 so I'm not a hundred percent sure if we'd be able to  
25 produce that to the plaintiff for them to do the

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2 comparison that the Court is suggesting.

3 THE COURT: Well, what was it you offering up  
4 that you thought would be the simple way to deal with  
5 this --

6 MS. FITZPATRICK: In the normal --

7 (interposing)

8 MS. FITZPATRICK: I'm sorry, Your Honor. In  
9 the normal course of business at CLU, we get requests  
10 for sections of the patrol guide and the administrative  
11 guide, and we are usually given like a particular date,  
12 and then a particular - like the use of force policy,  
13 like we would get a request, please give us the use of  
14 force policy that was in effect on a certain date. I  
15 think that if the plaintiffs had the ability to see what  
16 the subsections were in the administrative guide, that  
17 might be able to narrow down to what's relevant to the  
18 gravamen of the complaint and the case and that we could  
19 produce that because that's how it's usually done in the  
20 normal course.

21 Like, for instance, if they were interested in  
22 security at a large public meeting which is another one  
23 of the subsections in 316, which is command operations  
24 miscellaneous, we could go to MODS and we could say  
25 please give us 316-16 or -10 as it existed in 2020

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2 within the date range that the plaintiffs --

3 THE COURT: Ms. Fitzpatrick, we're talking in  
4 circles here because I already knew that.

5 MS. FITZPATRICK: Okay.

6 THE COURT: I'm talking about a very narrow  
7 (indiscernible). Let me try it one more time. And you  
8 thought you had a solution which sounded great, and  
9 maybe you're backtracking or maybe we're  
10 misunderstanding each other. You're going to give them,  
11 presumably today. I'll talk to Mr. Scutero about that.  
12 A complete table of contents and the complete  
13 administrative guide that exists today. That's a given.  
14 Also a given is that if there's something in there  
15 that's germane to the case, frankly, I mean I'll give  
16 them a free pass without any need for coming back to me  
17 for like 20 of them. They can pick any 20 they want,  
18 and if they want to see, if it shows a revision after,  
19 you know, 2020, they could say, you know what, give me  
20 this one as it existed in April 2020. And you're  
21 already telling me that you're going to be able to do  
22 that. That's fine. All of that is a given.

23 The one problem that anyone has pointed out to  
24 me is what if there's something in the administrative  
25 guide in 2019 that got removed, that was in effect in

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2 2020 and got removed in 2021? It doesn't appear in the  
3 current administrative guide. So my question is could a  
4 complete table of contents be printed, as you put it,  
5 for 2019, that's the question I asked you, Ms.  
6 Fitzpatrick, and that's the question I thought you told  
7 me yes to.

8 MS. FITZPATRICK: I apologize, Your Honor, I  
9 think there was a little bit of confusion. I honestly I  
10 don't know the answer to that question. I have to speak  
11 to someone in management orders and directives to see  
12 about how they keep their table of contents  
13 historically. I don't know. I don't want to say --

14 (interposing)

15 THE COURT: That's fine.

16 MS. FITZPATRICK: -- inaccurate.

17 THE COURT: Let's look into that right away.  
18 Ms. Marquez, what date do you want?

19 MS. MARQUEZ: Your Honor, I just want to put on  
20 the record that, you know, none of this burden was  
21 mentioned at all in any of the meet and confers --

22 THE COURT: Ms. Marquez, you got to answer my  
23 questions when I ask you a question.

24 MS. MARQUEZ: I was trying to provide an  
25 alternative because I don't know --

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2 THE COURT: If you're not interested, that's  
3 fine. We'll move onto something else. This is my  
4 solution to this.

5 MS. MARQUEZ: What I was going to - what I was  
6 going to say is that for the revisions the defendants  
7 already know when the administrative guide was amended.  
8 They keep an official record that is published that I  
9 believe we put with our papers. And so they do know,  
10 you know, what subsections have been amended. And to  
11 the extent that the table of contents reflects the same,  
12 so, for instance, 303, duties and responsibilities, to  
13 the extent those still exist, as they were back back in  
14 2020, we could drop a few of the sections, and they  
15 could just produce everything and the amendments, you  
16 know, produce the current AG as it exists today, and to  
17 the extent anything in those sections has been amended,  
18 produce all those amendments. And they already know  
19 what amendments there are because they have that list of  
20 amendments.

21 THE COURT: Okay, stop right there.

22 MS. MARQUEZ: Is that --

23 THE COURT: Stop, stop, stop. So the premise  
24 of this is that there is a list of amendment to 303 I  
25 guess by date that shows what's happened since 2019

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2 through the present, is that what you're, that what you  
3 think --

4 MS. MARQUEZ: Yes, and so it's called the  
5 timeline, and it's published, I mention in the letter  
6 it's published on the NYPD website. It goes --

7 THE COURT: Have you seen it?

8 MS. MARQUEZ: Yeah, and I referenced it to  
9 defendants.

10 THE COURT: Does it list --

11 MS. MARQUEZ: So it's --

12 THE COURT: Hold on, hold on, hold on. Does it  
13 list, have you seen the list of amendments in 303?

14 MS. MARQUEZ: I could pull it up and look at it  
15 and search, yeah, but it will say the procedure number  
16 that has been amended and what date it was amended.

17 THE COURT: Okay, and can you --

18 MR. SCUTERO: Judge, if I may --

19 THE COURT: Who is this?

20 MR. SCUTERO: This is Mr. Scutero, Judge.

21 THE COURT: Go ahead.

22 MR. SCUTERO: Before we go down this road, I  
23 wanted to mention to the Court that the timeline that  
24 plaintiffs are referencing is not a complete history of  
25 the revisions that were made to the administrative

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2 guide, and we pointed that out to them during our meet  
3 and confer. And so they're relying on information that  
4 isn't actually compete, and so that's why I think going  
5 through or following the suggestion that the State is  
6 proposing would not be useful, you know, for purposes -  
7 I think the proposal that Your Honor was making would  
8 be, if we explore that proposal, that would be a more  
9 useful part of our time today rather than going through  
10 something that really is based on information that isn't  
11 complete.

12 THE COURT: Ms. Marquez, you took me off my  
13 track to say here's another solution. Just go through  
14 these revisions and give me those revisions. Mr.  
15 Scutero says they're incomplete. If you don't care,  
16 then we'll go with your way.

17 MS. MARQUEZ: Right, and so I mean I don't know  
18 who's right because prior counsel on this meet and  
19 confer process that it was complete, but if it's less  
20 than complete, this is at least a great starting point.  
21 If we see something in the current AG that says  
22 something that this was amended, and, again, without  
23 having seen some of those provisions, I don't know if it  
24 will say, you know, as clearly as that.

25 But at the very least we have a starting point

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2 because I didn't hear defendants to say that their own  
3 document is saying that something was amended when it  
4 was not. It sounds like what they're saying is that  
5 there were other amendments that somehow or not  
6 accounted for in that document, and so I think it, you  
7 know --

8 (interposing)

9 THE COURT: I'm sorry, I'm completely lost.  
10 Are we back to the administrative guide again or are we  
11 talking about your list of amendments?

12 MS. MARQUEZ: The list of amendments talks  
13 about the amendment to the administrative guide,  
14 provisions to the administrative guide.

15 THE COURT: I'm completely lost.

16 MS. MARQUEZ: Okay.

17 THE COURT: The administrative guide has its  
18 little procedures in it. At the top of the page it says  
19 date effective. Okay? So that provides you some  
20 information about when that thing came into effect.  
21 That is not a list of amendments. That's the current  
22 guide. Are you with me so far?

23 MS. MARQUEZ: Yes.

24 THE COURT: Then I thought you told me there's  
25 some separate thing is which a list of --

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2 MS. MARQUEZ: Correct.

3 THE COURT: -- amendments which Mr. Scutero  
4 thinks is incomplete and which you were told otherwise,  
5 okay.

6 MS. MARQUEZ: Yes, that's correct.

7 THE COURT: So what are you proposing? What is  
8 it your proposing as to those lists of amendments?

9 MS. MARQUEZ: So I think --

10 (interposing)

11 MS. MARQUEZ: I think the Court --

12 THE COURT: Have you seen - I don't think I  
13 understand. Have you seen this list of amendments that  
14 you're talking about? Can you say these amendments have  
15 occurred to specific things and we would like the prior  
16 version and it's some reasonable number?

17 MS. MARQUEZ: Yes, we cited in footnote 2, or  
18 footnote 3, excuse me, and we have seen the documents  
19 and anything that --

20 THE COURT: It's not --

21 (interposing)

22 THE COURT: -- sorry.

23 MS. MARQUEZ: And so anything that starts with  
24 the number, anything that's in the 300 range will refer  
25 to an administrative guide section. So we know that

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2 there are administrative guide sections, we don't have  
3 the table of contents of the current guide, so I'm not  
4 sure if the sections have changed. Assuming they, you  
5 know, they exist as they did back in 2020, then I have a  
6 pretty good of what, at least what section it pertains  
7 to. But in any event, we know when the administrative  
8 guide was amended. We have cited this to say, to  
9 question, you know, the burden of producing the guide  
10 that existed back in 2020 because it doesn't seem like  
11 it was amended at all during the time of the protests;  
12 only since.

13 And so I think the Court was proposing, you  
14 know, a two-part process where we get the administrative  
15 guide, we look at all of the sections, we tally up, you  
16 know, which sections seem to have been amended, and then  
17 follow up again with defendants to get those amendments.  
18 But I'm saying this is a shortcut because they already  
19 know at the minimum the amendments that are reflected  
20 here and the timeline. And they should --

21 THE COURT: Okay, I --

22 MS. MARQUEZ: -- readily produce those --

23 THE COURT: I clicked on your links. There's  
24 hundreds of amendments. They apparently amend all the  
25 time. So I'm not sure what you're asking about this

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2 particular listing.

3 MS. MARQUEZ: So the majority of the amendments  
4 I would say are from the patrol guide sections, not the  
5 administrative guide. The patrol guide would be  
6 anything with a 200 range.

7 THE COURT: It seems that everything you need  
8 is in your hands. You're going to get the complete  
9 administrative guide now. It has the procedures  
10 numbers. There's only going to be five or ten that  
11 have, or some reasonable number, that have any relevance  
12 to what's going on here. Okay? You're going to take  
13 those, you can look on this list and see if there are  
14 procedures that got changed and what the dates are. You  
15 can look it up by number. You'll see on the thing  
16 itself what date it thinks it was in effect. And  
17 there's going to be some reasonable number. They can  
18 then get you the ones from 2019 or whatever it was.  
19 What is the problem with that, Ms. Marquez?

20 MS. MARQUEZ: Well, we have depositions  
21 including one tomorrow that has (indiscernible) very  
22 specific issue of policies and when they were amended,  
23 and, you know, we have received nothing so far. I still  
24 don't really understand --

25 THE COURT: I'm not --

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2 MS. MARQUEZ: -- the burden.

3 THE COURT: I'm not saying we should be in a  
4 situation. The City took way too long to figure out  
5 this problem. There was insufficient discussion. It's  
6 ridiculous that I have to be involved at this level of  
7 detail. I don't blame you. But we have to solve the  
8 problem. You're going to get - Mr. Scutero, any problem  
9 with getting the current guide to them today?

10 MR. SCUTERO: Judge, the only problem is we  
11 have to review the guide for privilege, and it is, you  
12 know, there are a number of sections within the guide,  
13 it's quite --

14 THE COURT: You have till tomorrow, you have  
15 till tomorrow to review it for privilege, and I'll give  
16 you a 502(d) order so there's no waiver. Because this  
17 should've happened ages ago. Whatever request for an  
18 extension of that is denied. All right, I'll issue a  
19 502(d) order today saying you're to produce it by  
20 tomorrow. Okay, you're getting it by tomorrow.

21 MS. MARQUEZ: And the, yeah, I mean I still  
22 plan on holding open the deposition to the extent that  
23 any prior revision --

24 (interposing)

25 THE COURT: -- if there's something that comes

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2 up that you could've asked at the deposition and they  
3 failed to do it, come back to me instantly if they won't  
4 agree to reproduce the person.

5 MS. MARQUEZ: The other thing I'd ask is  
6 instead of just saying tomorrow, if we could get it  
7 tomorrow by 9 a.m. The deposition starts at 9:30. I  
8 mean I'll do my best to review it, but --

9 THE COURT: Well, they're the ones that have  
10 the incentive to get it to you beforehand because  
11 they're the ones who're going to have to bring back the  
12 witness if it gets screwed up, and I promise to, if a  
13 witness has to be brought up because of this delay, this  
14 really is the City's fault. They took way too long on  
15 this. So I will be happy to figure out a way to make  
16 you whole if there's a way to do it.

17 MR. SCUTERO: Judge --

18 THE COURT: I'm going to order them to produce  
19 it tomorrow, and if they, you know, if they want to do  
20 it by 9:30, that'll solve this problem for them. Ms.  
21 Marquez, anything else? I'll give you a chance, Mr.  
22 Scutero. Anything else you want to say before I hear  
23 from Scutero?

24 MS. MARQUEZ: Yeah, I will do my best, I'll be  
25 taking a deposition at 9:30, so I won't be able to

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2 review a document produced at 9:30, but especially if  
3 it's as lengthy as they're saying, but --

4 THE COURT: Yeah, so, I mean getting it by 9:30  
5 is not going to matter to you anyway.

6 MS. MARQUEZ: Yeah, but I mean I'll try my  
7 best, I still think that I'll have to come back to the  
8 Court about this.

9 THE COURT: All right, well, maybe they'll  
10 agree. Don't assume that you have to come to me. Mr.  
11 Scutero, go ahead.

12 MR. SCUTERO: Judge, thank you. I just wanted  
13 to flag for the Court with respect to the deposition  
14 that counsel is referencing for tomorrow, we had brought  
15 to counsel, to the plaintiffs' attention that our  
16 request to reschedule that deposition because of, you  
17 know, tied to this issue, it would be difficult to  
18 prepare the witness for the disposition. We only  
19 received a timeframe for the topic that the witness will  
20 be testifying to on May 8 from plaintiffs. And so we  
21 were not able to obtain the documents and have the  
22 witness speak to the necessary people in order to be  
23 properly prepared for the deposition. And we wanted to  
24 avoid another situation that happened in the Canganis  
25 (phonetic) deposition.

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2           And so we requested, we tried to work it out  
3 with plaintiffs to see if they would be willing to  
4 reschedule this deposition to another date, especially  
5 since we had agreed with plaintiffs on another deponent  
6 and extended them the courtesy to reschedule a  
7 deposition. We informed plaintiff that we would not be  
8 able to appear for the deposition tomorrow.

9           So, you know, there's a little bit of a I guess  
10 disconnect --

11           THE COURT: Oh, you're not planning to appear  
12 tomorrow?

13           MR. SCUTERO: For the deposition, the witness  
14 will not be appearing for a deposition, Judge.

15           THE COURT: Oh, Ms. Marquez, were you aware of  
16 that?

17           MS. MARQUEZ: So I could say a number of  
18 things. One, just to the inaccuracy of, you know, the  
19 topics, the topics were laid out quite clearly in many  
20 meet and confers, and that's I think not open any more.  
21 But there is an order at 961 that requires an emergent  
22 situation to adjourn a deposition. Defendants have not  
23 brought up the administrative guide as any kind of  
24 concern as to preparing this witness. Rather, they just  
25 said that the counsel preparing him before left a month

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2 ago, and they didn't have enough time to prepare him at  
3 all, which didn't sound emergent to us, and they still  
4 haven't moved for a protective order, and it's not  
5 proper I think to raise it on a call now where it's not  
6 been put forth before the Court, and we haven't had a  
7 chance to respond --

8 THE COURT: It sounds like --

9 (interposing)

10 THE COURT: Sounds like they've unilaterally  
11 said they're not producing this person tomorrow, so I'm  
12 not quite sure what the, why I'm being involved as if  
13 this was emergent. I mean it's a little bit emergent  
14 but not enough for us to start arguing this out now.

15 MR. SCUTERO: Judge, I wanted to bring it to  
16 your attention because it was mentioned in plaintiffs'  
17 opposition papers and plaintiff has made a number of  
18 representations today about, you know, connecting that  
19 deposition to the need for the administrative guide, and  
20 I didn't want it to be a surprise to the Court if this  
21 becomes an issue later on. We're still hopeful that  
22 plaintiffs will extend us the courtesy to reschedule  
23 this deposition, especially because I think it would be  
24 best for all parties --

25 THE COURT: Okay, listen, listen, listen, stop,

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2 stop, stop, stop. I'm not getting involved in this  
3 deposition. You're not producing the witness. You two  
4 should talk it out. There's too many facts here that  
5 bear on whether the conduct is appropriate or not. This  
6 is not the place to try to figure it out. Ms. Marques,  
7 is there anything else you think we need to do today?

8 MS. MARQUEZ: No, Your Honor.

9 THE COURT: All right, I'm going to issue an  
10 order that says the defendants must produce the patrol  
11 guide by tomorrow, May 24, the complete current one and  
12 that if there's any privileged material in there, the  
13 production will not result in any waiver.

14 MS. FITZPATRICK: I'm sorry, Your Honor, this  
15 is Ms. Fitzpatrick. It's the administrative guide that  
16 we're going to produce?

17 THE COURT: What did I say?

18 MS. FITZPATRICK: Patrol.

19 THE COURT: Did I say patrol? Sorry, I meant  
20 administrative guide. Okay, Mr. Scutero, anything else  
21 we need to do today?

22 MR. SCUTERO: No, Your Honor.

23 THE COURT: Okay, thank you, everyone, good  
24 bye.

25 MR. SCUTERO: Thank you, Judge.

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2 (Whereupon the matter is adjourned.)

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C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the United States District  
6 Court, Southern District of New York, In Re: New York  
7 Policing During Summer 2020 Demonstrations, docket  
8 #20cv8924, was prepared using PC-based transcription  
9 software and is a true and accurate record of the  
10 proceedings.

11

12

13

14

15 Signature Carole Ludwig

16

CAROLE LUDWIG

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Date: May 26, 2023

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